



LPTV
SPECTRUM
RIGHTS
COALITION

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EX PARTE COMMENTS

Expanding the Economic and Innovation
Opportunities of Spectrum Through Incentive Auctions

FCC Docket No. 12-268
August 2013



How Many Watch Free Broadcast Television?



100
MILLION
VIEWERS!

...and here is the proof >

A New Post DTV Transition Measurement Method



TOTAL-OTA

> New measurement technique used by the Coalition which counts all TV HHs which use OTA TV, including all MVPD TV HHs which also have an OTA TV in the HH.

EXCLUSIVE-OTA

> Old measurement technique used by NAB, NCTA, CTIA, CEA, FCC, Nielsen, and Wall Street. But it only counts non-MVPD TV HHs with TVs.

Total-OTA Measures The True Reach Of OTA TV

TOTAL-OTA

HIGH ESTIMATE

118 MILLION PEOPLE

NAB/GFK 19.3% EXCLUSIVE OTA

MIDDLE ESTIMATE

96 MILLION PEOPLE

FCC 12% EXCLUSIVE OTA

LOW ESTIMATE

81 MILLION PEOPLE

CEA 7% EXCLUSIVE OTA



HIGH ESTIMATE

- ✓ 2013 US Census USA population estimate = 315 million
 - ✓ 2010 US Census Average people per HH = 2.6 per HH
 - ✓ 2013 estimate of US HHs = 121 million HH
 - ✓ 2013 Nielsen TV HHs = 115 million HH
 - ✓ 2013 USA TV population (2+) = 299 million people
 - ✓ 2013 NAB/GFK “exclusive OTA” percentage = 19.3%
 - ✓ $19.3\% \times 299 \text{ million} = 57.7 \text{ million people}$
 - ✓ Cable/Telco MVPD = 54%, or 62.1 million TV HHs
 - ✓ $62.1 \text{ million TV HHs} \times 2.6 / \text{HH} = 161.5 \text{ million people}$
 - ✓ 14th Video Report says DBS-MVPD = 34 million TV HHs
 - ✓ $34 \text{ million} \times 2.6 / \text{TV HH} = 88.4 \text{ million people}$
 - ✓ 50% of DBS-MVPD also use OTA for local TV
 - ✓ $88.4 \text{ million} \times 50\% = 44.2 \text{ million people!}$
 - ✓ 10% of cable/telco-MVPD also use OTA
 - ✓ $10\% \text{ of } 161.5 \text{ million} = 16 \text{ million people}$
-
- > Exclusive OTA = 57.7 million people
 - > DBS-MVPD 50% OTA = 44.2 million people
 - > Cable/Telco-MVPD 10% OTA = 16 million people
 - > Total OTA Potential = 117.9 million people!
 - > divided by 299 million TV Population 2+
 - = 39% OTA potential!

200+ Programming Networks Utilize LPTV

**2500+
LOCAL
& DIVERSE
CONTENT
CHANNELS**

Sample data from RabbitEars.info – July 2013

# OF NETWORKS	NETWORK CONTENT AND DEMO FOCUS	# OF DTV CHANNELS
43	HISPANIC	850
23	RELIGIOUS	550
33	ETHNIC	182
25	FAMILY/CLASSIC TV	260
13	GOVERNMENT	141
6	SHOPPING	120
5	MUSIC OR AUDIO	153
3	WEATHER	134
3	AFRICAN AMERICAN	100

LPTV ARE EMERGENCY ALERT SYSTEM OPERATORS

The Coalition supports awarding a priority in the post auction channel repacking to LPTV stations which agree to lease digital channel capacity to government and education agencies. They then qualify for “Civic Broadcaster” status.



KWVT-LD in Salem Oregon is the Prime EAS provider for the Oregon State Capitol Region. It has a million \$+ broadcast plant and reaches over 75% of the State population. It may get repacked out of business. **What should the FCC do with LPTV stations which provide a vital community EAS function?** The concept of a “civic set-aside” LPTV station was proposed by Civic Affairs Network Ensuring the broadcast needs of the “civic and educational” institutions in the DMA.

...and sometimes the only one!

UMRA* Compliance Needed By The FCC

THE FEDERAL UNFUNDED MANDATE ON LPTV

UMRA* - Unfunded Mandates Reform Act – 1995

Neither the House Committee nor the Senate Committee asked the CBO to evaluate the impact on the Auction if LPTV & TX were eligible for the auction. And, they did not study the impacts on LPTV & TX. This is why it is important for the FCC to do this.

FACT #1



The Spectrum Auction is a \$1 Billion Unfunded Mandate by the Federal Government on 74% of all TV licensees, the 6400+ FCC LPTV & Translator licensees.

\$156,250 per station*

BASED ON INDUSTRY RESEARCH FOR THE COST OF LPTV & TX STATION REPACKING MOVES AND EQUIPMENT DURING A THREE-YEAR PERIOD AFTER THE AUCTION ELIGIBLE LICENSEES HAVE MOVED INTO THE NEW CORE.



x 6400+ licensees = **\$1 Billion!**

...now, before the Auction!

All LPTV Stations Will Be Repacked

LPTV & TX REPACKING WILL TAKE YEARS TO COMPLETE

Similar to the DTV transition which the Primary stations completed in 2009, LPTV stations still have another 24 months to go until September 2015. If the Primary and Class A's are repacked starting in 2016, LPTV will not complete that process until 2020 or longer.

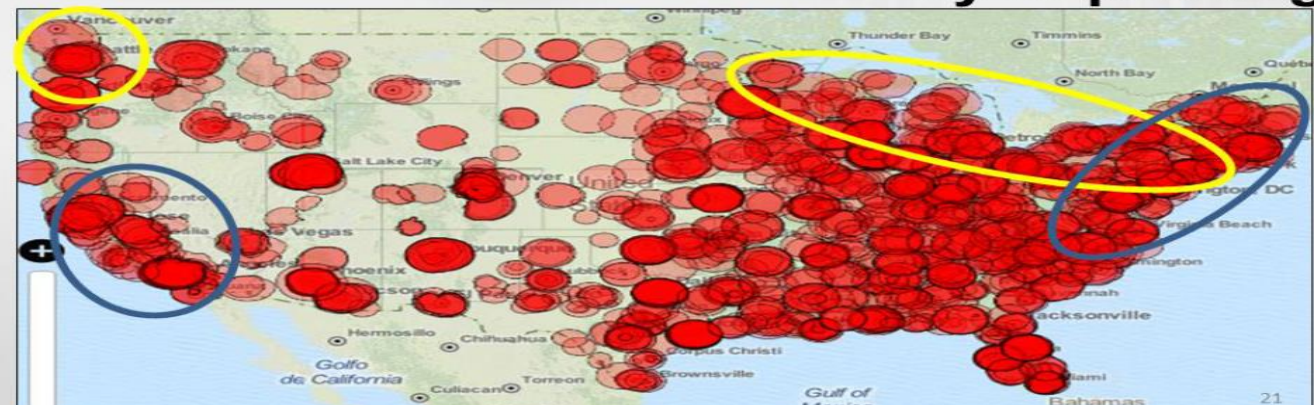
CIVIC MEDIA ADVISORS – NPRM 2013

CLEARED	NEW CORE	TOTAL DISPLACED INTO NEW CORE	CURRENT # OF LPTV STATIONS IN NEW CORE	% OF LPTV STATIONS AFFECTED
120-MHZ	2-31	2,645	2,405	100%+
84-MHZ	2-36	1,931	2,900	66.5%
60-MHZ	2-36, 38-41	1,364	3,310	41.2%

NAB – NPRM 2013



Areas Most Seriously Affected by Repacking




...and all have to pay for it!

The Changing Definition of Secondary

SECONDARY FOR INTERFERENCE ONLY!

When you ask Congress why LPTV is not eligible for the auction they get mad and say it is because LPTV is “secondary” and they did not need permission to take their spectrum and make them move without compensation.

Since the spectrum which is eventually sold to the auction winners has nothing at all to do physically with the spectrum offered for sale to the government, being secondary does not matter.



If any spectrum should have been made available it should be LPTV since it is secondary! But Congress just decided to TAKE IT AND FORCE LPTV TO MOVE WITHOUT AN UMRA IMPACT ANALYSIS, NOR ANY COMPENSATION!

...everyone has their opinion!

LPTV “Spectrum Efficiency” Is Not Law

LPTV STATIONS ARE AIRING AS MANY AS 8 CHANNELS!

Most network full power local affiliates only air 2 or 3 digital channels, some less. LPTV stations have been pioneering the airing of many channels since they started their A-D transition. There are however many LPTV which air just one channel of a network feed to satisfy national cable carriage agreements.

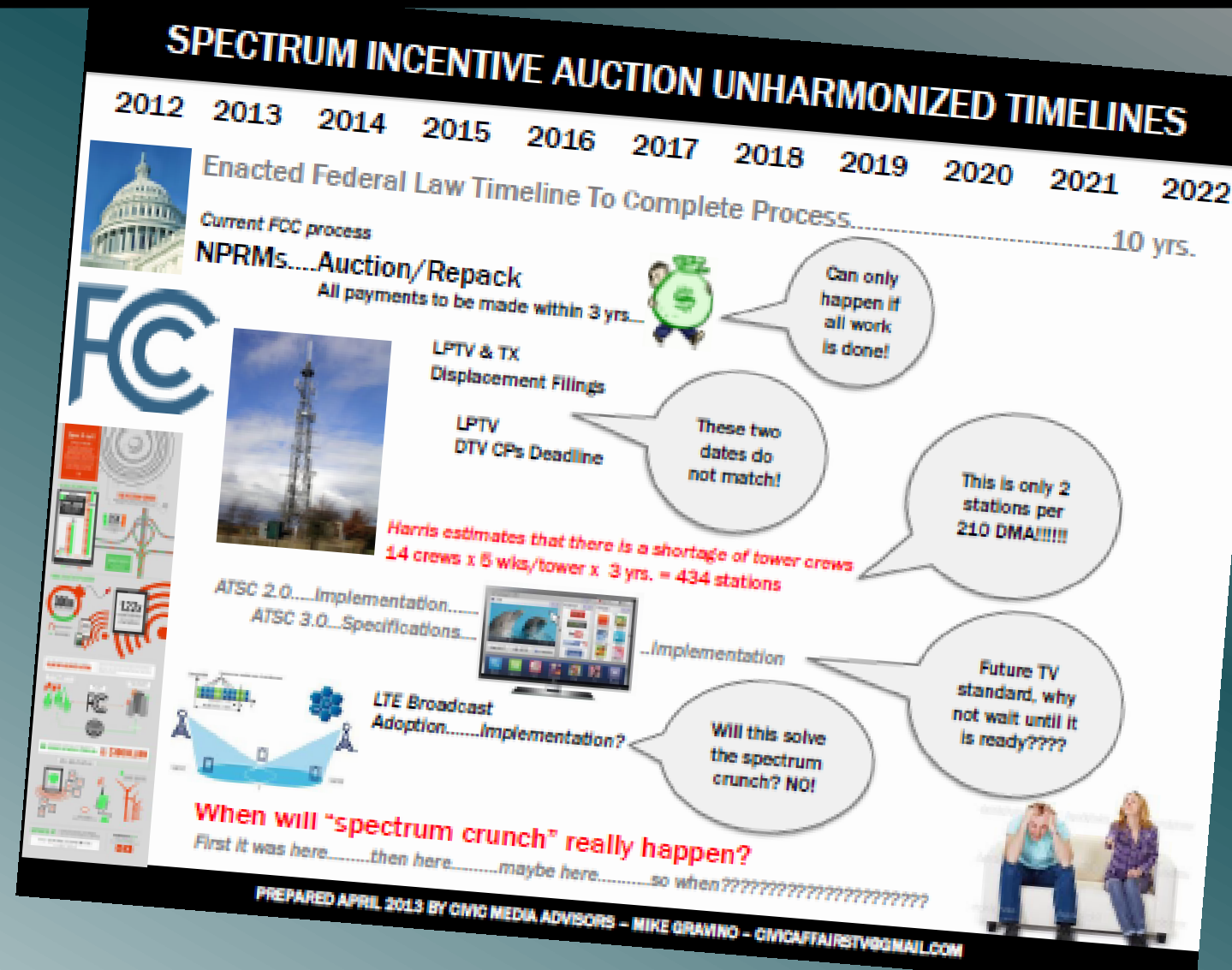


...but some would like it so!

The Real Cause of the Spectrum Crunch

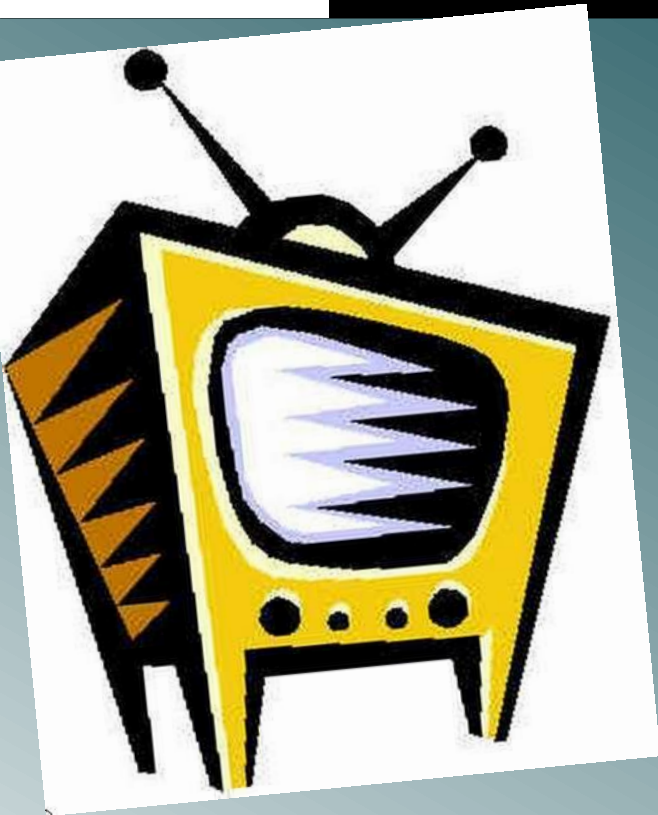
CONGRESS
GAVE THE FCC
UNTIL 2022
TO COMPLETE
THE AUCTION

So why the rush? A lot of integration needs to be done so that the affects on industry, commerce, and the viewers are minimal. But that is not the process we are on. It can be done, but all parties would have to take a step forward into collaboration. Fat chance...



...Unharmonized Timelines?

Ancillary Services Authorization



ATSC 2.0 DEPLOYED IN 2014 ON LPTV?

The new ATSC 2.0 standard was approved in 2013 for immediate deployment. Vendors and network operators are busy thinking of projects. For the Civic Broadcaster this is a huge new opportunity to provide with LPTV a vital civic and community purpose in the post-auction repack and displacement windows. The delivery of a one-to-many download stream of essential community content via TV is real. This data downloading is something LPTV can do today, and a lot better tomorrow. However, with the uncertainty of the Spectrum Auction process, this new cycle of technology innovation could languish. LPTV experimental licensing should be allowed as is part of our service. We are ready to innovate now, for our own business survival.



...it is a huge new opportunity!

Flex-Use is in the Spectrum Act

LPTV IS KEY FOR NEW NATIONAL FLEX-USE NETWORKS

Built into the Spectrum Act is a clause which allows auction eligible stations to not accept channel relocation funds and in return qualify to operate a flexible-use transmission standard other than ATSC. LPTV should also be allowed to apply for testing new transmission formats.

CTB NETWORKS – NATIONAL “CORRIDOR” STRATEGY LPTV FILINGS



...but only for eligible entities!

The DTV A-D Conversion Fixed Ending Date

FCC CDBS SEARCH – AUG. 2013

LPTV NEEDS RELIEF FROM HAVING TO DOUBLE-BUILD WITHIN 5-YRS

There are still thousands of LPTV A-D and 2009 Filing Window Construction Permits which are scheduled to expire during 2014, 2015, and 2016. The A-D ones have a fixed hard date of Sep. 2015. This means many will have to complete the expensive A-D build and have to do it again in the channel repack.

2400+ Outstanding CP
1000+ CP Extended
1442 Digital Companions
3572 Licensed LD & TX

Newly Licensed...

744 in 2009

934 in 2010

819 in 2011

981 in 2012

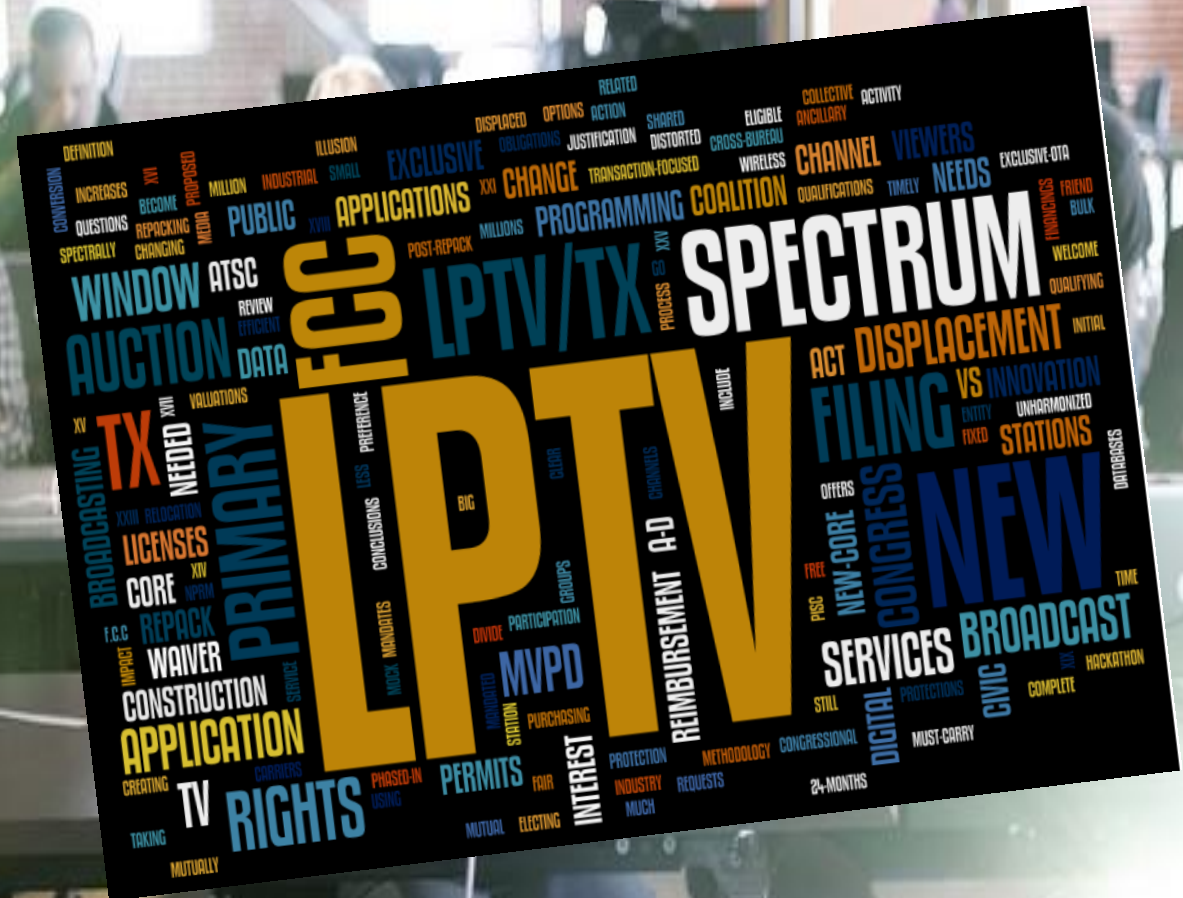
293 in 2013



...9/2015, time to change it?

FCC LACKS LPTV INDUSTRY CROSS BUREAU RESEARCH CAPABILITIES

While the FCC is leading the way with Big Data initiatives, it is way behind in developing cross-bureau projects. The Coalition is ready to help sponsor an LPTV Big Data Hackathon to create new big data to understand the impact of the auction and channel repack on LPTV.

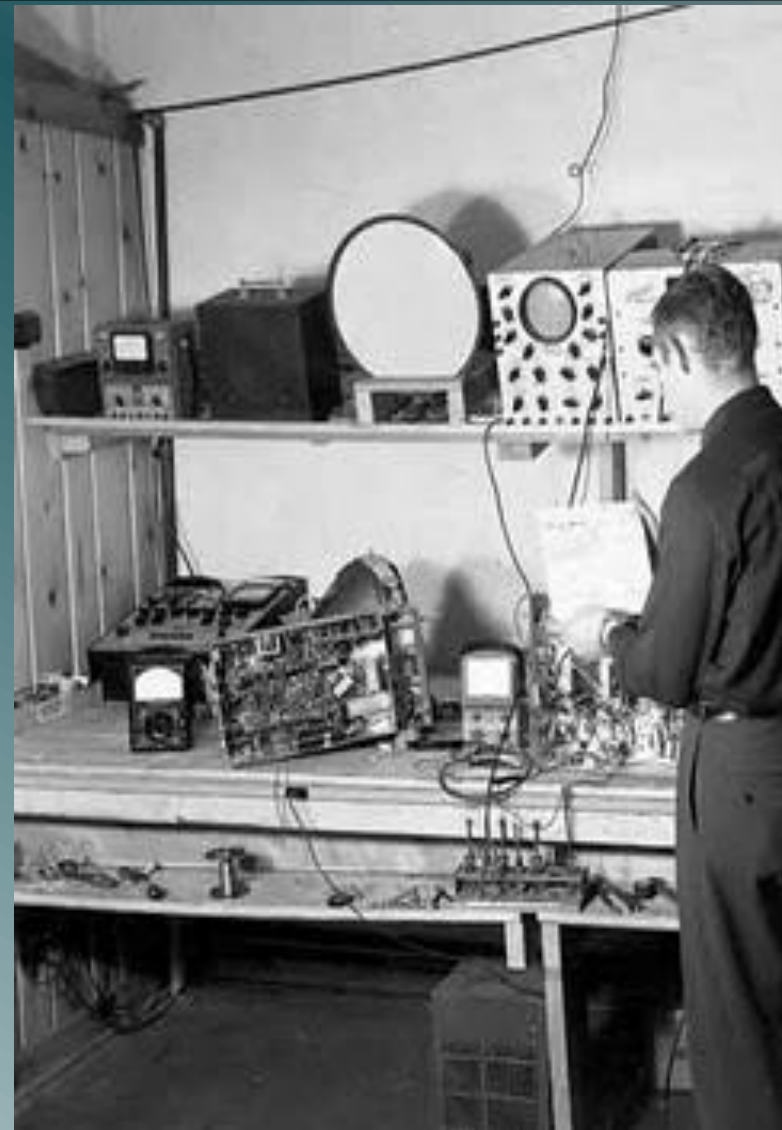


...time for an LPTV Hackathon?

The Pace of LPTV Innovation

LPTV SPECTRUM INNOVATION IS BEING HAMPERED

As one of the key mandates of the LPTV service, spectrum usage innovation must be allowed to proceed along side of the Spectrum Auction process. Experimental licensing and special rule making should be expedited so that the LPTV service can thrive in the post auction channel repacking. Do not slow us down because the auction process is taking a long time to implement. VHF, UHF, and Flex-use research needs to be done now!



> The Channel-6 Franken Radio Issue Needs An Experimental Licensee To See If It Can Work Since Millions of Diverse Listeners Use These Services

> The 1999 Digital Data Pilot Project Licensees Need Protection in the Channel Repack. They have authorization to operate flex-use now, and have Congressional approval to do so. However, any new rules in the auction process need to accommodate these licensees in their right to innovate.

> Flex-use Experimental Licenses Need To Be Expanded and Issued Now.

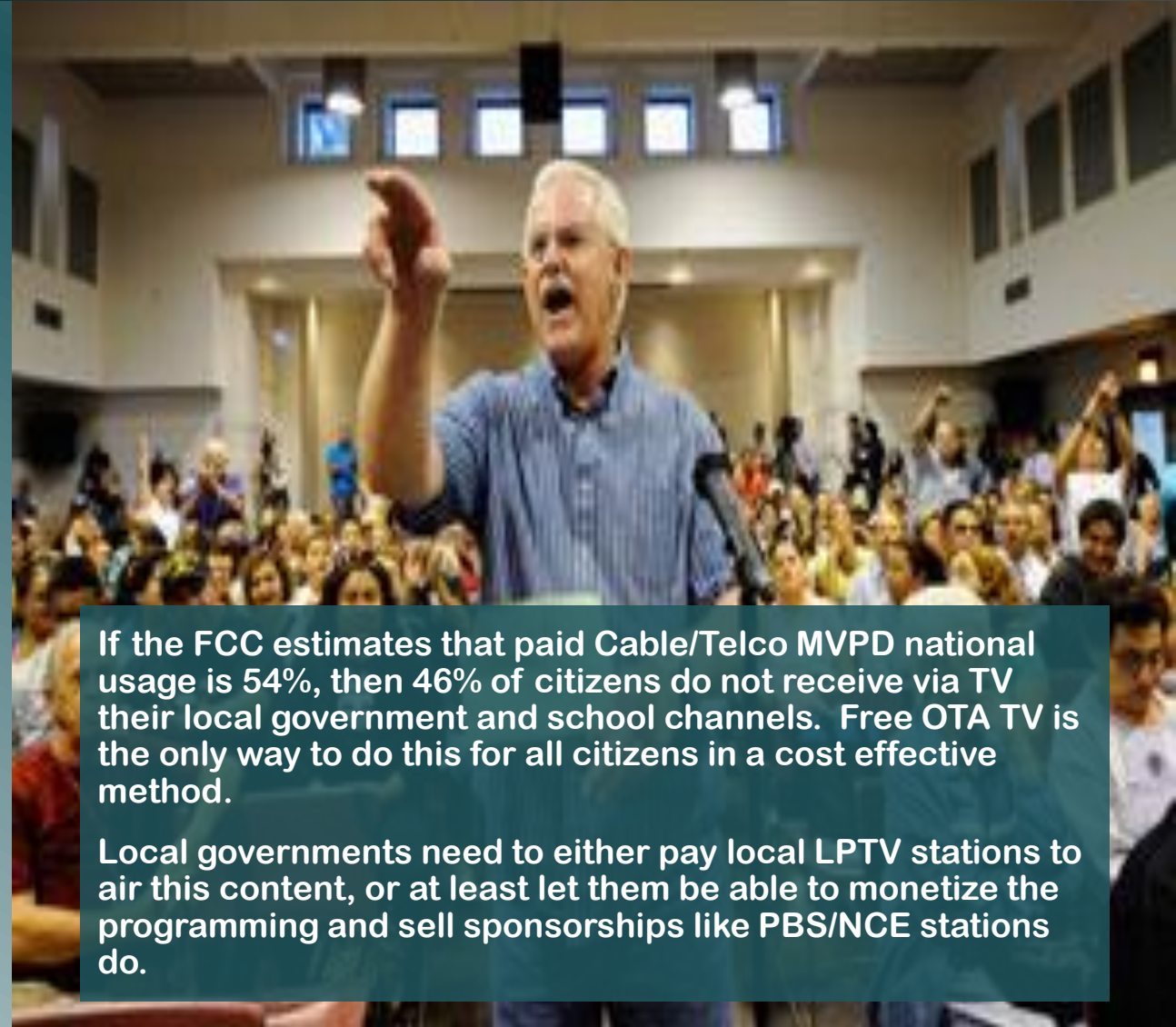
...must not be slowed down!

The Civic Broadcasting Digital Divide

LPTV CIVIC BROADCASTER PRIORITY REPACKING

Across the country local and State governments use cable television channels, the internet, TV translators, and with the DTV transition, now broadcast television. While on the cable systems the PEG laws provide for local government and education channels, and on DBS there is STELA, but for the broadcast TV licensees there is no such provisioning of channel capacity.

Since many local governments invest a lot into their government and education cable channels, and all citizens pay for that with local rights of way licensing, then that content should be made available for broadcast also



If the FCC estimates that paid Cable/Telco MVPD national usage is 54%, then 46% of citizens do not receive via TV their local government and school channels. Free OTA TV is the only way to do this for all citizens in a cost effective method.

Local governments need to either pay local LPTV stations to air this content, or at least let them be able to monetize the programming and sell sponsorships like PBS/NCE stations do.

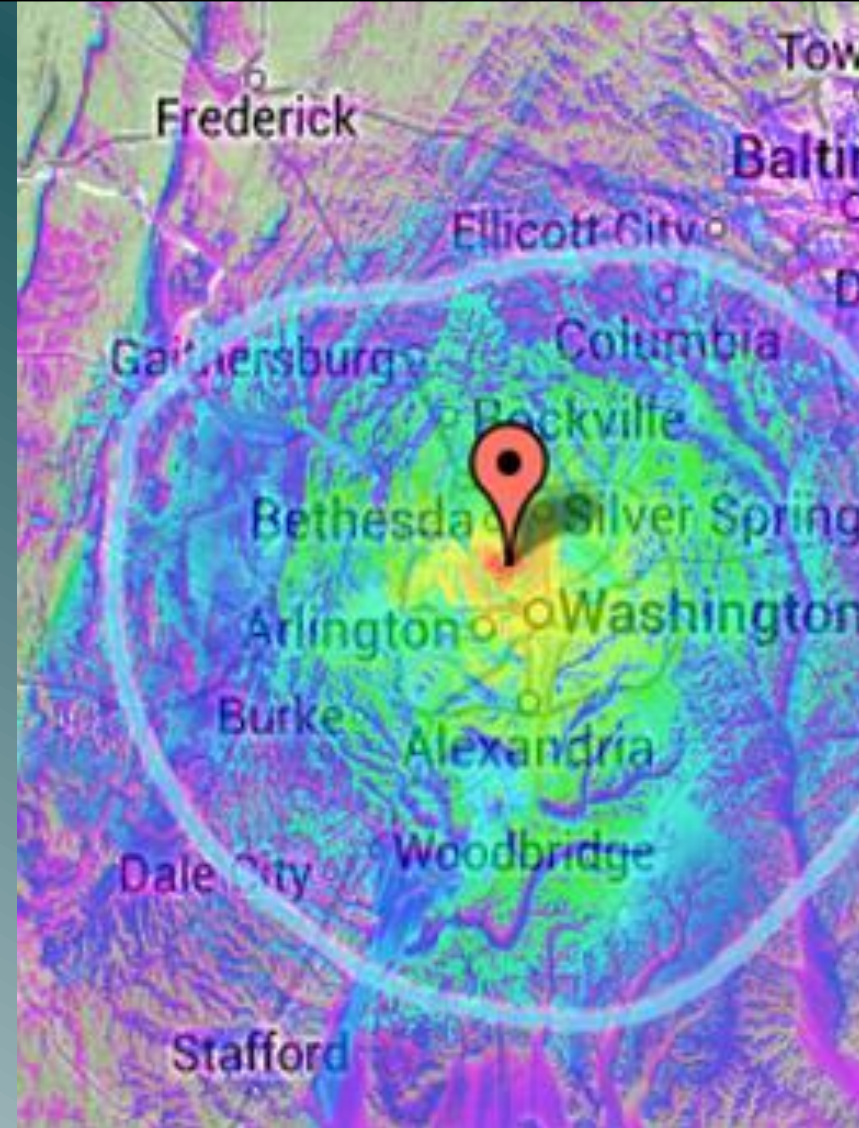
...LPTV can help solve it - today!

Welcome to the New Core

WILL THERE BE SPACE FOR LPTV IN EACH DMA?

While no one can say for certain that there will be adequate UHF channels left available for LPTV in the post-auction channel repacking in each DMA, there certainly will be VHF channel capacity.

The Big Lie is that it all depends on how many eligible full power and Class A stations elect to be in the auction, it doesn't. The National Band Plan moves everyone and lets Primary displace Secondary.



The National Band Plan will clear 51-3X no matter what, so all stations occupying these channels will need to move down into what the New Core will be.

The Coalition has analyzed many DMA and the potential auction participants. It will vary by market whether there will be room in the UHF for all LPTV.

	51 DOWN NO VOLUNTEERS	VOLUNTARY VHF TO UHF	8 TV SELL VHF TO UHF	NO VHF TO UHF 8 CLASS-A SELL
VHF	2	---	---	---
	3	---	---	---
	4	---	---	---
	5	WTVF	---	WTVF
	6	---	---	---
	7	---	---	---
	8	WNPT	---	WNPT
	9	---	---	---
	10	WSMV-TV	---	WSMV-TV
	11	---	---	---
	12	WRMX-LP	WRMX-LP	WRMX-LP
	13	WRMX-TV	WRMX-TV	WRMX-TV
	14	WZTV	WZTV	WZTV
	15	WNAB	WNPT	WNAB
	16	WURN-TV	WURN-TV	WURN-TV
	17	WUXP-TV	WZTV	WUXP-TV
	18	WCTE	WNAB	WCTE
	19	WVHL-LP	WURN-TV	WVHL-LP
	20	WNXP-LP	WUXP-TV	WNXP-LP
	21	WNTU-LP	WCTE	WNTU-LP
	22	WJWL-LP	WVHL-LP	WJWL-LP
	23	WJDE-LD	WNXP-LP	WJDE-LD
	24	WPGD-LD	WNTU-LP	WPGD-LD
	25	WHTN	WJWL-LP	WHTN
	26	WKUW-LD	WJDE-LD	WKUW-LD
	27	WLLC-LP	WPGD-LD	WLLC-LP
	28	WJFS	WHTN	WJFS
	29	WCKV-TV	WKUW-LD	WCKV-TV
	30	---	WLLC-LP	---
	31	WJFS	---	---
	32	UNLICENSED	UNLICENSED	UNLICENSED
	33	UNLICENSED	UNLICENSED	UNLICENSED
	34	UNLICENSED	UNLICENSED	UNLICENSED
	35	UNLICENSED	UNLICENSED	UNLICENSED
	36	RADIO ASTRO	RADIO ASTRO	RADIO ASTRO
	37	NATIONAL BAND	NATIONAL BAND	NATIONAL BAND
	38	NATIONAL BAND	NATIONAL BAND	NATIONAL BAND
	39	NATIONAL BAND	NATIONAL BAND	NATIONAL BAND
	40	NATIONAL BAND	NATIONAL BAND	NATIONAL BAND
	41	NATIONAL BAND	NATIONAL BAND	NATIONAL BAND
	42	NATIONAL BAND	NATIONAL BAND	NATIONAL BAND
	43	NATIONAL BAND	NATIONAL BAND	NATIONAL BAND
	44	NATIONAL BAND	NATIONAL BAND	NATIONAL BAND
	45	NATIONAL BAND	NATIONAL BAND	NATIONAL BAND
	46	NATIONAL BAND	NATIONAL BAND	NATIONAL BAND
	47	NATIONAL BAND	NATIONAL BAND	NATIONAL BAND
	48	NATIONAL BAND	NATIONAL BAND	NATIONAL BAND
	49	NATIONAL BAND	NATIONAL BAND	NATIONAL BAND

...where all LPTV are displaced!

The New Primary

ALLOW QUALIFYING LPTV TO REPACK AS PRIMARY

LPTV will be 3rd in line to repack, have to pay for its' own relocation and retuning costs, and have to compete in the displacement window for a New Core frequency assignment. Isn't it time to allow LPTV to elect be repacked as Primary, and be granted all of the same privileges and responsibilities?



The New Primary does not mean Full Power, it means as much power which is needed to repack (after TV and CD) to gain the largest audience and/or coverage area.

It also means MVPD must-carry and retrans rights.

LPTV licensees do not have to elect New Primary status and can keep their current status.

New Primary LPTV will have phased-in increases for FCC annual payments as they are granted and exercise MVPD carriage rights.

...a new level playing field?

Displacement Application Evaluation Priorities

EASING LPTV CHANNEL REPACKING BURDENS

Page #172, NPRM

> The Commission proposes allowing displaced LPTV stations to have the first opportunity to submit a displacement application and propose a new operating channel. The Commission also cited the need to determine how to resolve mutually exclusive displacement applications filed by LPTV stations displaced by repacking.

> The Commission proposes adopting a set of priorities and seeks comment on the types of priorities to recognize. The Commission specifically seeks comment on the impact of such displacement of LPTV stations, and of the priorities by which displacement applications will be evaluated, on small, minority-owned, and women-owned LPTV stations.



Let's get real – ALL LPTV stations are going to be displaced since none of them will be included within the TV Study software, so none will be repacked as-is. This means all LPTV, even those whose existing channels in the New Core that are not displaced, will probably be interference-affected by adjacent markets.

It would be unfair to LPTV already in the New Core to have to wait for the displaced LPTV to file. We all are going to have our coverage areas and pop counts changed, so we all should be able to make changes at the same time.

The Coalition does not support priorities for minority or women-owned LPTV stations. It does support a priority for small business. It also supports a priority for independent owners who are not affiliated with a full power station.

Qualifications For Mutually Exclusive Groups

THE MAJORITY OF ALL LPTV ARE SMALL ENTITIES

Page #182, NPRM

- > Some LPTV licenses are owned by large station groups and may not qualify as small entities. But the majority of all LPTV licensees are small.
- > LPTV stations may be required to submit a new showing that it qualifies for priorities that will enable its application to be selected from a mutually exclusive group. It is expected that this requirement will have a greater effect on small entities because all LPTVs are small entities.

All LPTV are being discriminated against in the Involuntary No-Incentive Spectrum Taking Auction. Any attempt at dividing us into discriminatory groups such as ethnicity, gender, content, audiences, and wealth is just another method of divide and conquer.

The Coalition does support a priority-repackaging for LPTV stations which agree to air local civic/school content, are primary EAS providers, and local news.



The FCC Justification

COULD THE FCC ALLOW LPTV TO PARTICIPATE IN THE AUCTION?

Page #183, NPRM

- > The Commission could allow low power television stations to participate in the reverse auction but this would have no practical use since low power television stations do not have to be protected in repacking and clearing them from their channels in the reverse auction would be unnecessary.
- > The Commission believes the additional burden on low power stations is outweighed by the need to implement Spectrum Act provisions, to recover a sufficient amount of spectrum in the reverse auction and to complete the successful repacking full power and Class A stations.



“Wouldn’t it be more practical to have LPTV in the auction to help lower the asking price the government has to pay for the spectrum, and to make sure enough eligible stations are involved?”



NPRM Item #071

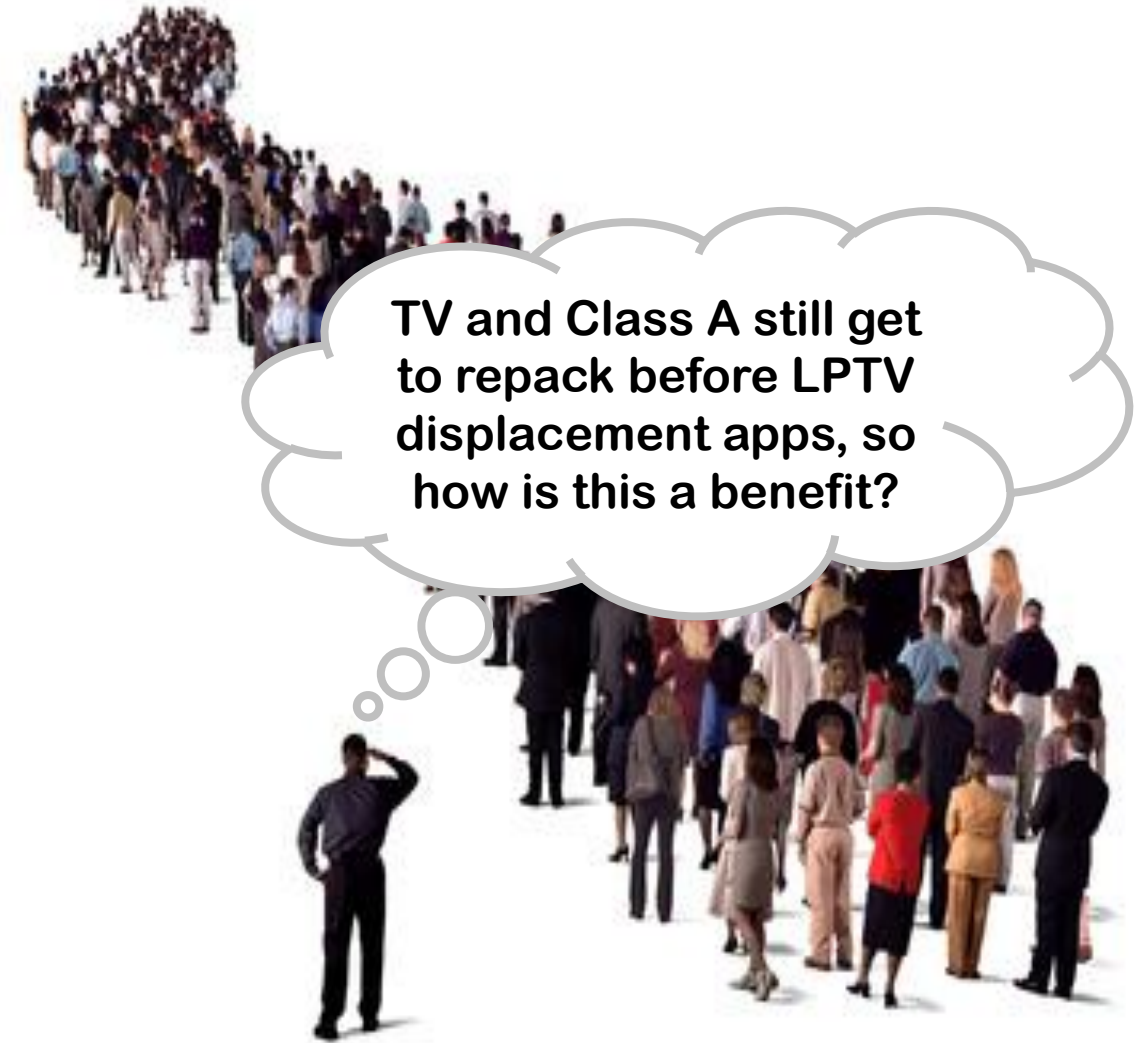
Small Entity New Channel Displacements

KNOW YOUR PLACE, YOU ARE STILL SECONDARY

Page #187 - NPRM

> To remediate the significant burden to low power television stations, all of which are defined as small entities, from being displaced as a result of repacking, the Commission proposes to allow these stations to have the first opportunity to submit a displacement application and propose a new operating channel.

> This proposal will benefit small entities by allowing them to identify one of the remaining channels and continue to operate their facilities and avoid having to go off the air.

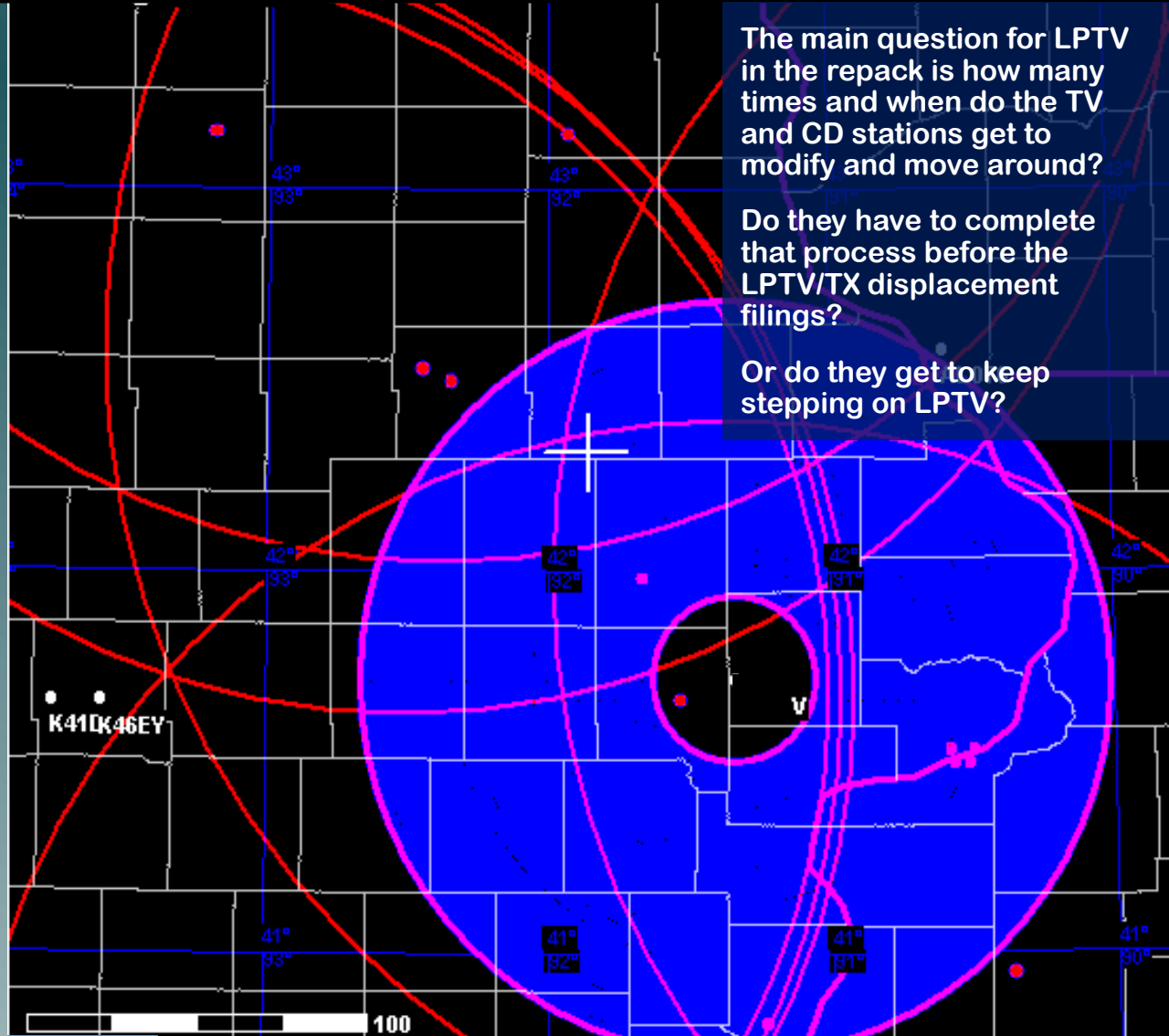


No Repacking Protection for LPTV/TX

CLASS-A REPACKED WITH NO LPTV INTERFERENCE

Page #43 - NPRM

- > Preservation of coverage in the repacking process does not extend to LPTV. The Act specifies that nothing in the repacking provision “shall be construed to alter the spectrum usage rights of low-power television stations.”
- > We do not interpret these provisions, when read together, to limit the Commission’s discretion in determining how best to satisfy the goals of the incentive auction provisions of the Spectrum Act by “making such reassignments of television channels as the Commission considers appropriate.”



The main question for LPTV in the repack is how many times and when do the TV and CD stations get to modify and move around?

Do they have to complete that process before the LPTV/TX displacement filings?

Or do they get to keep stepping on LPTV?

Include LPTV/TX in Bulk Purchasing & Services

LPTV SHOULD BE INCLUDED IN ANY COST SAVING PLANS

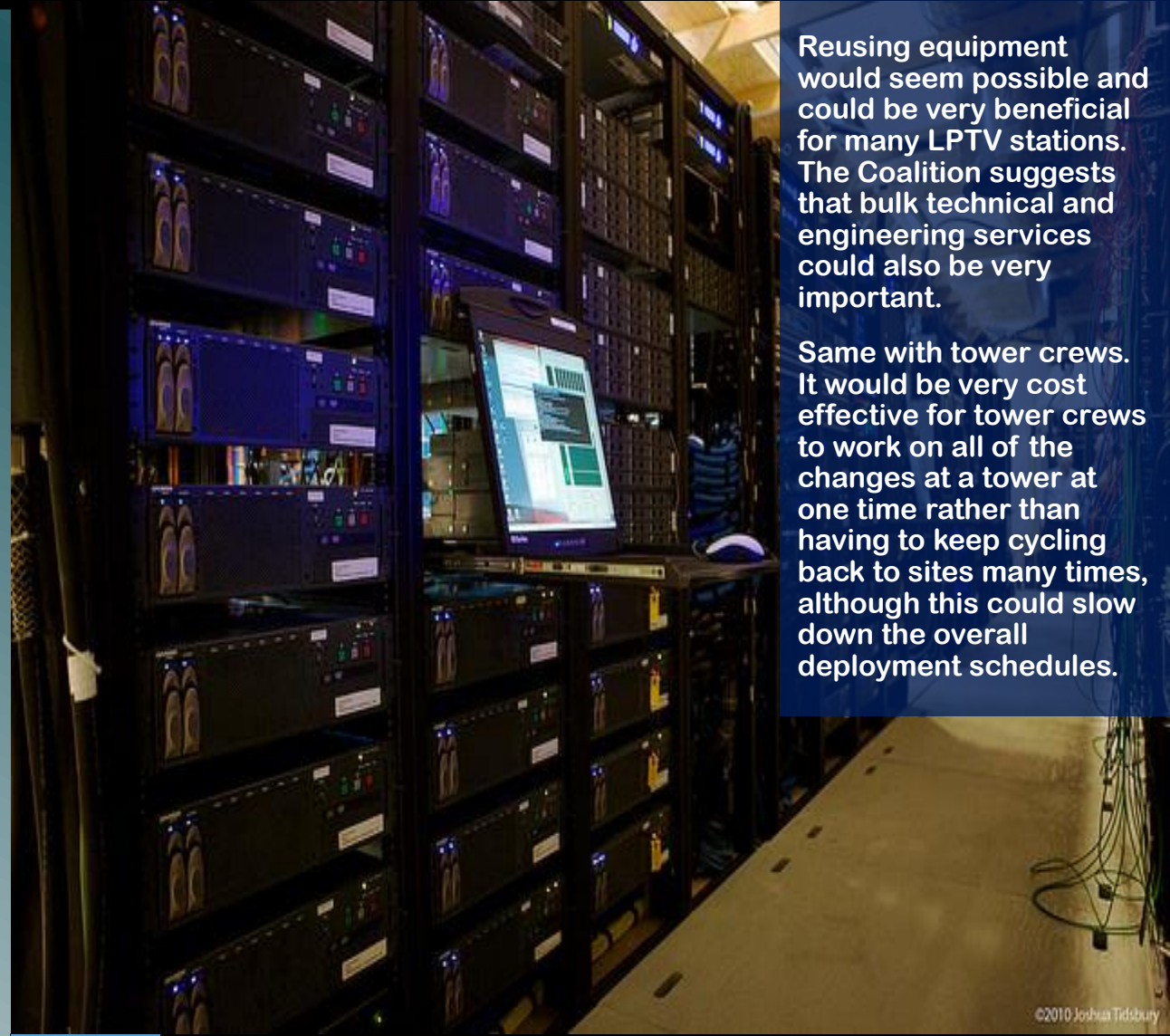
Page #115 - NPRM

> The FCC seeks comment on whether to explore bulk purchasing opportunities or bulk services arrangements that could reduce the relocation costs incurred by individual television licensees as a result of the repacking. In addition, during the digital television transition, some stations were able to repurpose their own analog and pre-transition digital equipment, or that of another station, for post transition use.

> We seek comment on methods to encourage broadcasters to make use of equipment that is no longer needed by a repacked or channel sharing licensee.

Reusing equipment would seem possible and could be very beneficial for many LPTV stations. The Coalition suggests that bulk technical and engineering services could also be very important.

Same with tower crews. It would be very cost effective for tower crews to work on all of the changes at a tower at one time rather than having to keep cycling back to sites many times, although this could slow down the overall deployment schedules.



©2010 Joshua Tidbury

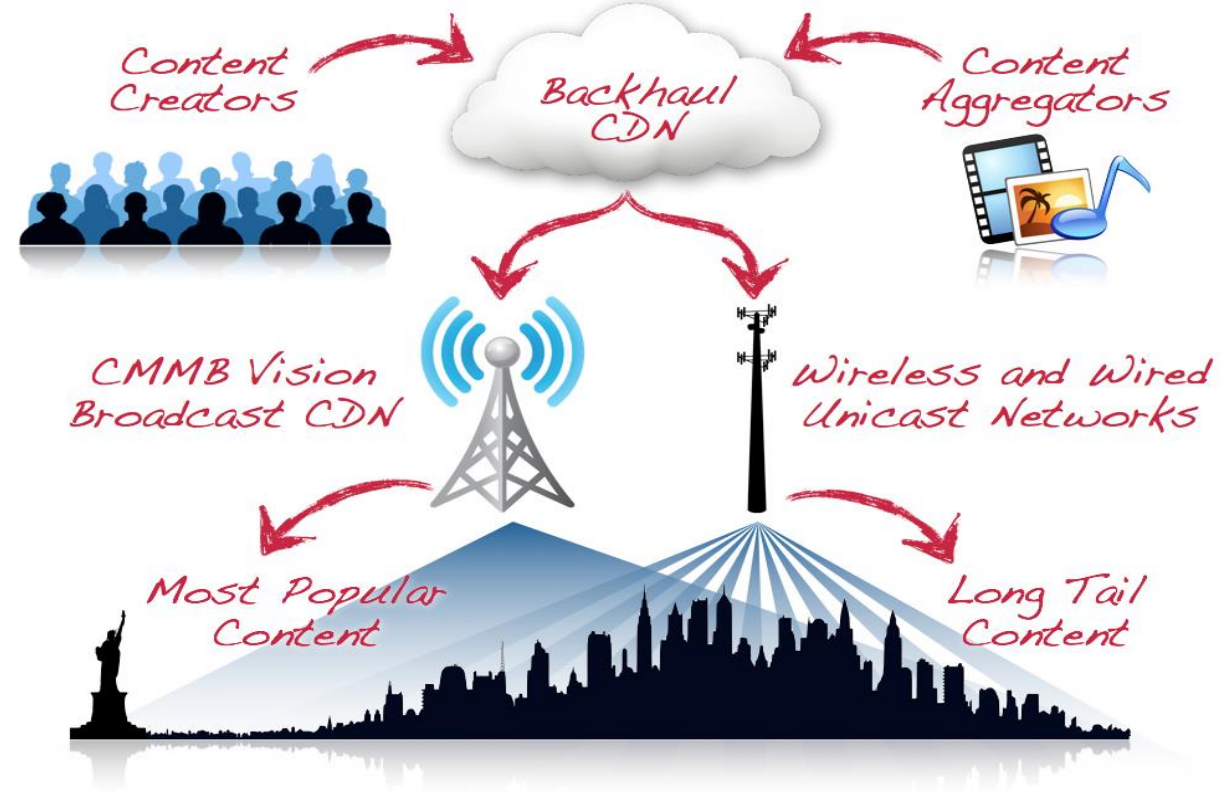
Service Rule Waiver In Lieu Of Reimbursement

LPTV SERVICE RULE WAIVERS...YES!

Page #115 - NPRM

> Instead of reimbursement for repacking costs, a television licensee may accept a waiver of the Commission's service rules to permit it to make flexible use of its spectrum to provide non-broadcast services, so long as it "provides at least 1 broadcast television program stream on such spectrum at no charge to the public."

> Which of our rules should be eligible for waiver under this provision? What types of flexible uses by broadcasters should we consider appropriate in this context, and what factors should go into this analysis?



At least three different technology innovators are planning on the use of LPTV for flexible use broadcast national networks. The Coalition supports them all, but as long as one ATSC free to the public stream of television is part of the service. Service rule waivers should be available for LPTV since innovation is one of our service mandates.

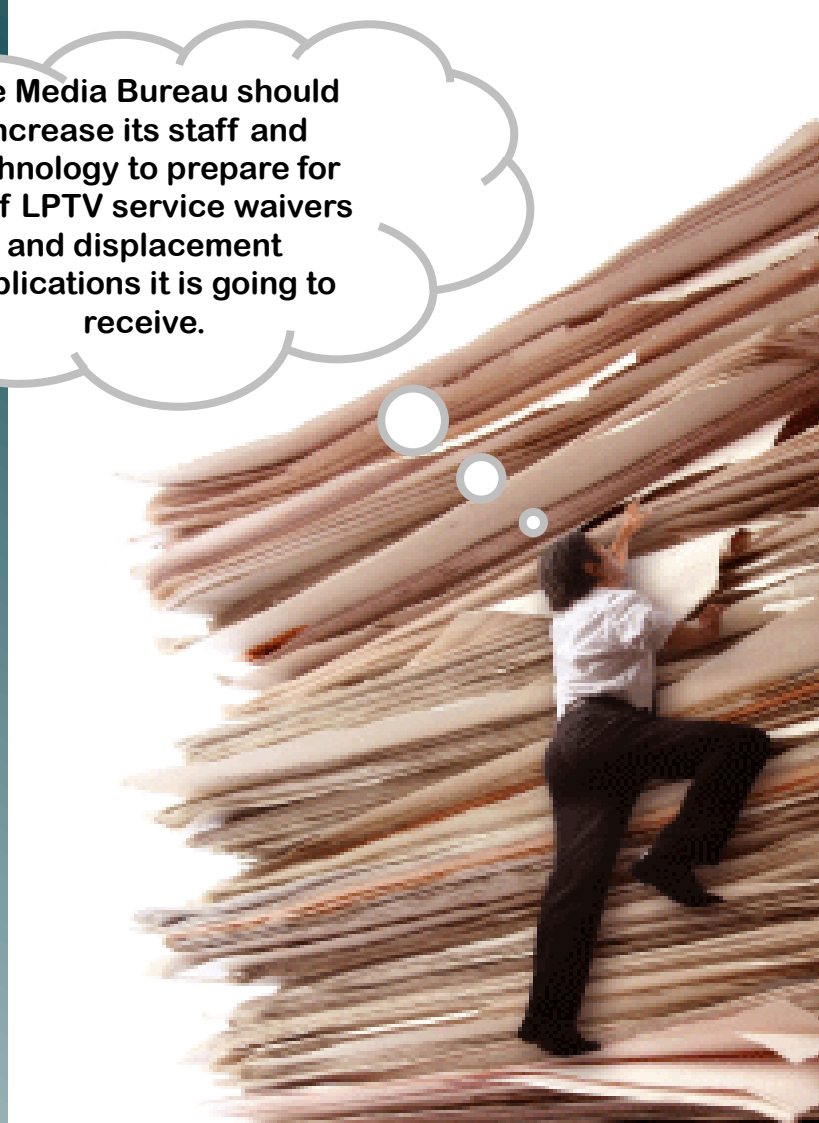
Procedures for Waiver Requests

EQUALITY FOR LPTV SERVICE WAIVERS

Page #116 - NPRM

- > We seek comment on appropriate procedures for the filing and review of any such waiver requests. At what point should any such requests be entertained, and how should they be submitted?
- > Should they be subject to public notice and an opportunity for comment? Should we require submission of any waiver requests at the same time and using the same procedures as for reimbursement requests?

How can we ensure that a licensee whose waiver request is not granted has an opportunity to obtain reimbursement for its eligible relocation costs?



The Media Bureau should increase its staff and technology to prepare for all of LPTV service waivers and displacement applications it is going to receive.

It would be totally unfair for auction eligible stations which forgo relocation funds and elect for a flex-use service waiver to get to file for it, and for LPTV innovators to have to wait for years to file.

Innovation is one of the cornerstones of LPTV and we should not have to wait!

Proposed MVPD Eligible Reimbursement Costs

LPTV MUST CARRY MVPD COST RECOVERY

Page #116 - NPRM

> We seek comment on the types of costs that MVPDs are likely to incur, and how to determine whether such costs are “reasonable” for purposes of the reimbursement mandate.

> Should we interpret the statute to provide for reimbursement of costs incurred in carrying a channel sharing station from the shared location if the station previously did not qualify for carriage on the MVPD system?

There are LPTV stations which currently qualify for cable MVPD must-carry, usually in small markets.

In these cases the MVPD should be compensated in the same manner as they are for eligible stations which have to move channels, and new receive equipment has to be installed at the cable head-end.

LPTV has been abused by the MVPD industry and the FCC rarely does anything about it. The leased access rules are a joke, and the FCC needs to fix the rules as part of the post-auction operating environment. No MVPD should be able to discriminate against LPTV using the auction rules as a basis for carrying what they already are carrying.

The Coalition would support a total evaluation of all MVPD/LPTV issues so that new rules can support diversity of content for the viewing audience.

Encourage Multicasting for Diverse Content

PROTECT LPTV CONTENT DIVERSITY

Page #119 - NPRM

- > We invite comment on measures that the Commission might take outside of the context of the multiple ownership rules to address any impact on diversity that may result from the incentive auction.
- > We envision that such measures might include ways to encourage multicasting opportunities or other alternative means of program delivery that could help to ensure that consumers will continue to have access to specialized or minority-oriented programming post-auction.



LPTV stations are at risk for losing the diverse audiences they have built and serve, especially those which might have to move to VHF. We need our own channel sharing plan in case there is not adequate UHF capacity.

The Coalition does not support priorities for channel repacking other than for civic use, primary EAS providers, and local news. Ethnic, faith, and other content providers are all going to have to compete for new channel assignments.

The well funded large station group owners with engineers on retainer will be able to beat the small single station owner to filing.

The single best thing that the FCC can do to protect LPTV content diversity is to limit when the TV and Class A stations can modify their channel assignments so that LPTV does not have to refile multiple times.

LPTV ADJACENT DMA MOVES

Page #119 - NPRM

> Because low power television and translator facilities have only secondary interference protection, we propose in section V that full power and Class A television stations will be assigned new channels in the broadcast television spectrum reorganization without regard to whether such channel assignments, or the modified facilities required to implement service on them, would interfere with existing low power television and translator facilities.

> Where such interference exists, or where an existing low power television or translator station would cause interference to a repacked “primary” status station, the low power television or translator station will be “displaced” and will either have to relocate to a new channel that does not cause interference or else discontinue operations altogether. Only a limited number of available channels may exist following the repacking process, limiting the relocation options available to displaced low power television and translator stations



No LPTV licensee should be forced to lose their license simply because the DMA they operate in does not have adequate channel capacity in the post-auction repacking.

Licensees should have the option of being able to move into an adjacent DMA in order to have a new channel, or to serve a similar market as to the one they were serving.

While the Spectrum Act specifically does not provide either coverage or population replication for LPTV, it is only fair that LPTV be allowed to find a channel to move to.

For example, a station airs Hispanic content and serves 2+ million TV HH, and all displacement options in the DMA only provide a 1 million TV HH. In an adjacent DMA there is an available channel with 2 million TV HHs and a similar Hispanic audience.

By moving into the adjacent DMA the LPTV would be both serving the needs of diversity, and also freeing up a channel in the DMA they are leaving.

LPTV VIEWERS ARE NOT SECONDARY!

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- > We invite comment on measures to help ensure that important programming provided by low power television and television translator stations continues to reach viewers.
- > Should we authorize voluntary channel sharing among low power television stations and among translator stations?
- > What role should the Commission play in, and what resources should the Commission dedicate to, providing access to spectrum for non-primary users of the broadcast bands after the incentive auction?
- > Should we consider measures to promote use of available digital capacity on full power and Class A broadcast television stations, MVPD systems, and/or the Internet to distribute low power television programming?



While the concept of LPTV Voluntary Channel Sharing sounds like it could work in principle, it opens up way too many unknowns into your business model. The Coalition has talked with many LPTV operators and the only way that any of them would do this is if it provided them with either MVPD must-carry or retrans rights.

After the auction and repack the Commission needs to assign considerable new resources to FCC LPTV staff since the service will be quickly deploying flex-use transmission methods.

The Coalition would support an increase in LPTV filing fees to have more staff dedicated to approving applications and waivers, higher quality industry data acquisition and analysis, and considerable new technical evaluation staff and tools.

The FCC should consider what the Coalition calls, the “New Primary”, where qualifying LPTV stations can elect to become Primary and can gain MVPD must-carry status. However, distribution via the internet while attractive in concept, would not reach that 20% of the viewers who do not use high speed broadband, or choose not to pay for it. Only OTA TV can reach this diverse audience.

Initial Displacement Application Filing Window

USE *TV STUDY* TO REPACK LPTV

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> After the repacking becomes effective and full power and Class A television stations have an early opportunity to file for a substitute channel as proposed above, we invite comment on whether to open an initial filing window for low power television and television translator stations to submit displacement applications.

> Such applications would not have to satisfy the current rule requirements for displacement applications identified above. They would be considered “cut-off” from competing applications as of the last day of the filing window. Following the end of that initial filing window, we would allow the filing of additional displacement applications on a first-come, first-served basis. This approach would permit low power television and translator stations at risk of displacement to avoid having to wait until interference from a full power or Class A television station actually occurs.

The FCC should assist LPTV in channel repacking by having *TV Study* run potential available channel assignments. Since the software is new, and all of the engineering companies will have no real-world experience in using it, the FCC should consider providing displaced LPTV stations with potential options.

The TV and CD licensees are being given literally free engineering services when they get their channel repacking assignments, so why not LPTV?

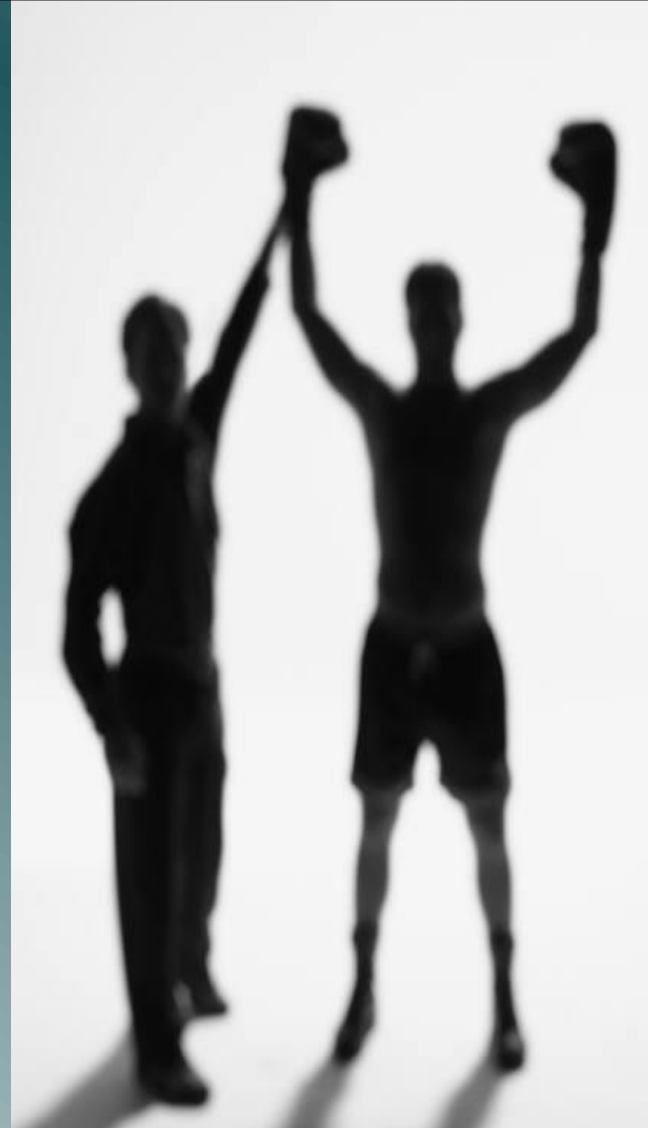
The timing of the displacement applications is crucial if the first-come, first-served rule is applied. However this greatly discriminates against the small operator since they will have to compete against much larger station groups to get this new engineering done.

Mutual Exclusivity For Displacement Applications

DEFINING THE PUBLIC INTEREST

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- > We also seek comment on whether and how to avoid mutual exclusivity for displacement applications filed by low power television and translator stations within the proposed window. Would the public interest be served by establishing a set of “selection priorities” to choose among applications when necessary?
- > Low power television and translator stations filing during the initial window would be required to submit a showing that they qualify for particular selection priorities, and the Commission would rank the displacement applications in order to determine which application to grant when necessary. Should we adopt such a procedure, we also seek comment on the types of selection priorities to adopt.
- > For example, should we establish preservation of the only local, over-the-air television service as our first priority, and grant a priority to applicants that provide the only network service to their communities?
- > We also welcome suggestions on alternative criteria or procedures for allocating available channels among low power television and translator stations at risk of displacement following the incentive auction.



The Coalition recommends that the use of “selection priorities” be restricted to just three classes; civic use, prime EAS provider, and local news stations.

In the case where a choice needs to be made between a national network affiliate LPTV which does not carry any local news vs. an independent local station which does, the local station should have priority.

The use of ethnicity, gender, business size, faith, and ownership affiliation with a full power are all not appropriate and are discriminatory without showing cause.

Since there are 1000s of LPTV which are still in the A-D transition and 2009 filing window, the Coalition recommends that any “showing” of qualifications be done at the time of the application and not be based on the 2012 date of the passing of the Act, which the showing rule has no basis in.

Shared Channel Spectrum Usage Rights

ELIMINATE CLASS-A STATUS IN THE REPACK

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> We note the unique problems that would exist if the terminated licensee were a Class A television station. We do not have authority to authorize additional Class A television stations. Moreover, a Class A television licensee that fails to meet the ongoing statutory eligibility requirements to maintain its Class A status is subject to modification of its license to low power television status. A Class A station whose rights are so modified would no longer be entitled to channel share.

> We invite comment on how to address such situations. Should channel sharing Class A stations whose licenses are modified to low power television status be permitted to file displacement applications to move to another channel as a low power television station, if a channel can be identified?

> How should we treat the spectrum usage rights that the licensee previously held to the shared channel?



The Coalition recommends that the elimination of the Class A status when these stations are repacked. At that time they should be converted into the “New Primary”, and then have to adhere to those new rules.

Since the only Class A window was authorized in 1999/2000, and many of these stations really do nothing more than broadcast a few hours a week of local programming, and many other LPTV stations provide far more local content than a lot of Class A stations provide, the Coalition recommends eliminating this status.

Meeting with staff of the Commissioners has revealed to the Coalition that there is no consensus on the issue of a new Class A window, and we believe that the Commissioners act on this if they choose.

Everyone is so concerned about not having more stations eligible for the auction that what the FCC and Congress are now facing is that there is not enough stations wanting to participate in the auction.

FCC staff can no longer say it is up to Congress, and Congress saying it is up to the FCC, and the Commissioners saying they do not know.

Cable & DBS MVPD Must-Carry Rights

INTERPRET THIS!

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- > With respect to cable and satellite carriage, section 6403(a)(1) of the Spectrum Act requires that a channel sharing station have the same cable and satellite carriage rights at its shared location that it would have at that same location were it not channel sharing. The cable and satellite carriage rules, however, provide Class A and other low power television stations fewer carriage rights than those afforded to full power television stations.
- > We interpret section 6403(a)(1) to provide that a Class A licensee sharee that channel shares with a full power licensee sharer possesses only those carriage rights to which a Class A station at the channel sharing location would be entitled were it not channel sharing.
- > Conversely, we interpret the statute to provide that a full power sharee that channel shares with a Class A licensee sharer will have the same carriage rights at the channel sharing location as would a nonchannel sharing full power station at the same location.
- > We note, however, that operating with the reduced power levels of a Class A station, a full power station would risk not being able to provide the requisite signal quality to a cable operator. We seek comment on these interpretations.



The entire broadcast television regulatory scheme is broken, and this proposed part of the Rule Making is proof positive of it.

Bits is bits, and it is just dumb industrial policy to pick winners and losers in the broadcast spectrum. There are many full powers which do not air any local content at all but those stations have must carry and retrans. Why? Because the entire system is a patchwork of policies, most of which are not fair to any of the industries involved.

What is needed is the New Primary, where all of these issues can be addressed and harmonized. Just like the UHF rule being used by major national station groups to sidestep the ownership caps, what it means to be primary needs to change, and ALL broadcasters need to be able to participate.

LPTV Participation in the Mock Auction

MODELING WHAT WILL HAPPEN TO THE 6400+ LPTV/TX

The FCC has announced that there will be a mock auction held prior to the real auction. While this is beneficial to the eligible entities in the auction it does not help the LPTV/TX stations which all will be affected by the auction.



The Coalition urges the Commission to authorize the mock auction concept but to add an addition to it which would look at the ramifications on the LPTV/TX stations.

After the results of the mock auction are known, and after *TV Study* has done the TV and CD repacking, it should just continue on with a proposed repacking analysis of the LPTV/TX in those DMA in the mock auction.

Since most LPTV/TX are very small businesses, and the cost of having *TV Study* engineering studies will be expensive until the contract engineering community knows how to use it properly, it is incumbent on the FCC to provide this assistance to the LPTV/TX licensees.

...we also need a Mock Repack!

Conclusions

LPTV/TX WILL DEFEND THEIR SPECTRUM RIGHTS

While this diverse industry does not all agree on every issue, nor on the solutions to solving the problems we will face, we do however converge on our resolve to defend the businesses which we have built, and the audiences we serve. The use of the “you are secondary so we can do what we want with you” will no longer work with us.



The Coalition is giving notice to the Commission that unless an impact study, based on the UMRA law, is conducted regarding the affects on the LPTV/TX licensees by the Spectrum Act, it will be forced to initiate legal action.

Since most the FCC staff are attorneys, and they all have opinions and justifications for how LPTV/TX has been or should be treated, literally none have been small business owners delivering essential and diverse content and services to the public.

Congress and the FCC is attempting to ruin our businesses and we will not stand by and do nothing.

...LPTV/TX need to be treated fairly!